



Department Source: Law

To: City Council

From: City Manager & Staff

Council Meeting Date: February 6, 2023

Re: Approval of Settlement Agreement with 1611 University, LLC, 1615 University, LLC, and 1617 University, LLC

## Executive Summary

A settlement has been negotiated for Council consideration on the litigation filed by 1611 University, LLC, 1615 University, LLC, and 1617 University, LLC related to denial of the Fyfer Subdivision Plats 2, 3 and 4.

## Discussion

On November 15, 2021, the City Council denied a request to replat property owned by 1611 University, LLC, 1615 University, LLC, and 1617 University, LLC (the "Applicant"). A replat of the property is necessary due to historical transfers of partial lots under prior subdivision regulations. Under the existing development code subdivision regulations, the Applicant is prohibited from building over lot lines and is required to replat the property before a building permit may be issued.

The request to replat the property began with submission of an original request by the owner to combine all of the parcels into one (1) large lot of approximately 200-foot width. That original request was denied by Council on May 17, 2021. The property owner came back to Council with a second request to replat the property into two (2) large lots of approximately 100-foot width each. The second request was denied by Council on August 2, 2021. The property owner submitted a third request to replat the property which would have created three (3) lots approximately 67-foot wide each. The third request was denied by Council on November 15, 2021.

On January 13, 2021, the Applicant brought suit in Boone County seeking mandamus, a declaratory judgment declaring the ordinances to be invalid, damages, compensation for violation of constitutional rights, punitive damages, attorney fees and costs. The original complaint contained a Count alleging a violation of federal rights and the case was removed to the US District Court for the Western District of Missouri. In March of 2022, the Applicant amended the complaint to remove the federal Section 1983 claim so the case was remanded back to the Boone County Circuit Court. Discovery is underway and the parties have engaged in settlement discussions. The settlement agreement attached to the resolution as "Exhibit A" is the result of those discussions.

The original Fyfer Subdivision was laid out with 70-foot wide lots. The settlement agreement provides for reconsideration by the City Council of the three replats which would have approved three (3) 67-foot wide lots known as Fyfer Subdivision Plat 2, Fyfer Subdivision Plat 3 and Fyfer Subdivision Plat 4. It also provides for payment to the Applicant of \$15,000.00. If the



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replats are ultimately approved by Council, the Applicant will dismiss the lawsuit with prejudice and release the City from any and all alleged liability related to the prior denials.

Settlement agreements are not normally brought to the Council for approval and ratification; however, in this instance the agreement is being presented to Council for approval because the subject matter directly relates to a Council action. If approved, the three Fyfer Subdivision replats to create three (3) approximately 67-foot wide lots will be brought forward by staff for reconsideration by the Council. At such time Council will be given an opportunity to re-evaluate and determine if the criteria in the City Code and state law have been met by the Applicant for the platting action.

## Fiscal Impact

Short-Term Impact: Applicant will be paid \$15,000.00 per the terms of the settlement agreement.

Long-Term Impact: Not applicable.

## Strategic & Comprehensive Plan Impact

### Strategic Plan Impacts:

Primary Impact: Not Applicable, Secondary Impact: Not Applicable, Tertiary Impact: Not Applicable

### Comprehensive Plan Impacts:

Primary Impact: Land Use & Growth Management, Secondary Impact: Not applicable, Tertiary Impact: Not Applicable

## Legislative History

Date	Action
05/17/2021	DEFEATED - B137-21: Approving the Final Plat of "Fyfer's Subdivision, Plat No. 2."
08/02/2021	DEFEATED - B222-21: Approving the Final Plat of "Fyfer's Subdivision, Plat No. 2."
08/02/2021	DEFEATED - B223-21: Approving the Final Plat of "Fyfer's Subdivision, Plat No. 3."
11/15/2021	DEFEATED - B356-21: Approving the Final Plat of "Fyfer's Subdivision, Plat No. 2."
11/15/2021	DEFEATED - B357-21: Approving the Final Plat of "Fyfer's Subdivision, Plat No. 3."



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11/15/2021	DEFEATED - B358-21: Approving the Final Plat of "Fyfer's Subdivision, Plat No. 4."
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Suggested Council Action

Adoption of the resolution authorizing the settlement agreement.